

Sec. 42.05.230. [Repealed, § 5 ch 113 SLA 1970.]

Sec. 42.05.231. Application. Application for a certificate shall be in writing and shall be in the form and contain the information required by the commission by regulation. (§ 6 ch 113 SLA 1970)

Sec. 42.05.240. [Repealed, § 5 ch 113 SLA 1970.]

Sec. 42.05.241. Conditions of issuance. A certificate may not be issued unless the commission finds that the applicant is fit, willing and able to provide the utility services applied for and that the services are required for the convenience and necessity of the public. The commission may issue a certificate granting an application in whole or in part and attach to the grant of it the terms and conditions it considers necessary to protect and promote the public interest including the condition that the applicant may or shall serve an area or provide a necessary service not contemplated by the applicant. The commission may, for good cause, deny an application with or without prejudice. (§ 6 ch 113 SLA 1970)

Sec. 42.05.250. [Repealed, § 5 ch 113 SLA 1970.]

Sec. 42.05.251. Use of streets in cities and boroughs. Public utilities have the right to a permit to use public streets, alleys and other public ways of a city or borough, whether home rule or otherwise, upon payment of a reasonable permit fee and on reasonable terms and conditions and with reasonable exceptions the city or borough requires. A dispute as to whether fees, terms, conditions or exceptions are reasonable shall be decided by the commission. The commission may require a utility to add the amount of any permit fee paid as a pro rata surcharge to its bills for service rendered at locations within the boundaries of any city or borough which requires payment of a permit fee. (§ 6 ch 113 SLA 1970)

NOTES TO DECISIONS

Municipal franchises granted to a cable television company were not superseded by the Alaska Public Utilities Commission Act, AS 42.05, since provisions of a municipal franchise not in actual conflict with commission regulatory activity remain in force. *B-C Cable Co. v. City of Juneau*, Sup. Ct. Op. No. 2112 (File No. 4587), 613 P.2d 616 (1980)

Sec. 42.05.260. [Repealed, § 5 ch 113 SLA 1970.]

Sec. 42.05.261. Discontinuance, suspension or abandonment of certificated service. (a) Except as otherwise provided in this section, a public utility may not discontinue or abandon a service for

which a certificate has been issued by the commission unless upon the application of the public utility and if, after notice and opportunity for hearing, the commission finds that the continued service is not required by public convenience and necessity. Any interested person may file with the commission a protest or memorandum of opposition to or in support of discontinuance or abandonment. The commission may authorize temporary suspension of a service or of part of a service.

(b) Upon complaint or upon its own motion, the commission may reinvestigate a previously authorized discontinuance, abandonment or suspension of a service of an operating public utility. If, after providing notice and an opportunity for a hearing, the commission finds that the public convenience and necessity require the service to be resumed, it may order the public utility to again provide the service. (§ 6 ch 113 SLA 1970)

Sec. 42.05.271. (Repealed. § 5 ch 113 SLA 1970.)

Sec. 42.05.271. Modification, suspension or revocation of certificate. Upon complaint or upon its own motion the commission, after notice and opportunity for hearing and for good cause shown, may amend, modify, suspend, or revoke a certificate, in whole or in part. Good cause for amendment, modification, suspension or revocation of a certificate includes

- (1) the requirements of public convenience and necessity;
- (2) misrepresentation of a material fact in obtaining the certificate;
- (3) unauthorized discontinuance or abandonment of all or part of a public utility's service;
- (4) willful failure to comply with the provisions of this chapter or the regulations or orders of the commission; or
- (5) willful failure to comply with a term, condition, or limitation of the certificate. (§ 6 ch 113 SLA 1970)

NOTES TO DECISIONS

AS 42.05.271(b) was supplemented by this section which provides for the modification, suspension or revocation of certificates for several listed reasons, including the requirements of public convenience and necessity. Alaska Pub. Util. Comm'n v. Chugach Elec. Ass'n, Sup. Ct. Op. No. 1636 (File No. 2969, 2990), 580 P.2d 667 (1978), overruled on other grounds. Sup. Ct. Op. No. 1636 (File No. 3636), 595 P.2d 626 (1979).

The term "willful" itself is not a "word of art" or a "technical term." It has many different meanings, depending upon the context in which it is used. North State

Tel. Co. v. Alaska Pub. Util. Comm'n, Sup. Ct. Op. No. 1035 (File No. 1838), 522 P.2d 711 (1974).

The word "willful" often denotes an act which is voluntary, knowingly or permissively done, as distinguished from one which is accidental or otherwise beyond the control of the person to be charged. North State Tel. Co. v. Alaska Pub. Util. Comm'n, Sup. Ct. Op. No. 1035 (File No. 1838), 522 P.2d 711 (1974).

If a person (1) intentionally does an act which is prohibited, irrespective of evil motive or reliance on erroneous advice, or (2) acts with careless disregard of statu-

tory requirements, the violation is wilful. *North State Tel. Co. v. Alaska Pub. Util. Comm'n, Sup. Ct. Op. No. 1035 (File No. 1838), 522 P.2d 711 (1974).*

The concept of wilfulness, i.e., failure to meet responsibility and exercise control, is in accordance with case law. *North State Tel. Co. v. Alaska Pub. Util. Comm'n, Sup. Ct. Op. No. 1035 (File No. 1838), 522 P.2d 711 (1974).*

"Wilful failure" may be such behavior through acts of commission or omission which justified belief that there was an intent entering into and characterizing the failure complained of. *North State Tel. Co. v. Alaska Pub. Util. Comm'n, Sup. Ct. Op. No. 1035 (File No. 1838), 522 P.2d 711 (1974).*

A failure to perform an act for a long period of time, which is required by law to be performed, generally constitutes a wilful failure to perform. *North State Tel. Co. v. Alaska Pub. Util. Comm'n, Sup. Ct. Op. No. 1035 (File No. 1838), 522 P.2d 711 (1974).*

The general notion that a wilful act

implies a bad purpose is derived from criminal statutes. It has no such meaning when used in a statute to denounce an act not in itself wrong. *North State Tel. Co. v. Alaska Pub. Util. Comm'n, Sup. Ct. Op. No. 1035 (File No. 1838), 522 P.2d 711 (1974).*

Commission's definition of "wilful" did not shift burden of justification. — The commission's definition of "wilful" as "requiring only a showing that the failure to comply was with knowledge of the consequences of such failure" in finding that there was a "wilful failure" to meet the condition in the certificate, i.e., "good cause," did not shift the burden of justification to the telephone company; rather, the commission was merely delineating the nature of what would be reasonable justification, so as to render a failure to meet the condition nonwilful and, thus, the nature of the case that had to be made out by the evidence. *North State Tel. Co. v. Alaska Pub. Util. Comm'n, Sup. Ct. Op. No. 1035 (File No. 1838), 522 P.2d 711 (1974).*

Sec. 42.05.280. [Repealed, § 5 ch 113 SLA 1970.]

Sec. 42.05.281. Transfer of certificate. A certificate may not be sold or leased, rented, transferred or inherited without the prior approval of the commission. (§ 6 ch 113 SLA 1970)

Sec. 42.05.290. [Repealed, § 5 ch 113 SLA 1970.]

Article 4. Services and Facilities.

Section	Section
291. Standards of service and facilities	331. Standards for measurement
301. Discrimination in service	341. Testing of meter standards
311. Joint use and interconnection of facilities	351. Testing of appliances
321. Failure to agree upon joint use or interconnection	

Collateral references. — 64 Am. Jur. 2d, Public Utilities, §§ 236 — 239.
73 C.J.S., Public Utilities, § 44

Sec. 42.05.291. Standards of service and facilities. (a) Each public utility shall furnish and maintain adequate, efficient and safe service and facilities. This service shall be reasonably continuous and without unreasonable interruption or delay.

(b) Subject to the provisions of this chapter and the regulations or orders of the commission, a public utility may establish reasonable rules and regulations governing the conditions under which it will render service.

(c) The commission may, upon its own motion or upon complaint after providing reasonable notice and opportunity for hearing, adopt as to service and facilities, including the crossing of facilities, just and reasonable standards, classifications, regulations, and practices to be furnished, imposed, observed, and followed by public utilities; adopt adequate and reasonable standards for the measurement of quantity, quality, pressure, initial voltage, or other conditions pertaining to the supply of the service of public utilities; adopt reasonable regulations for the examination and testing of the service, and for the measurement of it; adopt or approve reasonable regulations, specifications, and standards to secure the accuracy of meters and appliances for measurement; and provide for the examination and testing of appliances used for the measurement of a service of a public utility. In doing so, the commission shall conform to the standard practices of the industry.

(d) If the commission, upon its own motion or upon complaint, after providing reasonable notice and opportunity for hearing, finds that the service or facilities of a public utility are unreasonable, unsafe, inadequate, insufficient, or unreasonably discriminatory, or otherwise in violation of this chapter, the commission shall prescribe, by regulation or order, the reasonable, safe, adequate, sufficient service or facilities to be observed, furnished, enforced, or employed, including all repairs, changes, alterations, extensions, substitutions, or improvements in facilities that are reasonably necessary and proper for the safety, accommodation, and convenience of the public. (§ 6 ch 113 SLA 1970)

NOTES TO DECISIONS

Jurisdiction over complaints. — When a disgruntled phone subscriber seeks to recover damages for inadequate telephone service which is common to the public, the complaint may properly be referred to the public utilities commission for exercise of primary jurisdiction. When, however, a phone customer alleges that he has suffered from acts or omissions of the

utility which result in inadequate service which is different from that provided to the public as a whole, the complaint should be handled as a traditional common-law action, and the superior court should determine the issues in accordance with settled principles of tort liability. *Jeffries v. Glacier State Tel. Co.*, Sup. Ct. Op. No. 1985 (File No. 4298), 604 P.2d 4 (1979).

§ 42.05.300

PUBLIC UTILITIES AND CARRIERS

§ 42.05.311

Collateral references. — Federal control as affecting power of public service commission, 4 ALR 1703, 1718, 1719; 8 ALR 969, 981; 10 ALR 956, 11 ALR 1450. 14 ALR 234; 19 ALR 678; 52 ALR 296

Right of public utility company to discontinue its entire service, 11 ALR 252.

Sec. 42.05.300. [Repealed, § 5 ch 113 SLA 1970.]

Sec. 42.05.301. Discrimination in service. A public utility may not, as to service, make or grant an unreasonable preference or advantage to any person or subject any person to an unreasonable prejudice or disadvantage. A public utility may not establish or maintain or provide an unreasonable difference as to service, either as between localities or as between classes of service, but nothing in this section prohibits the establishment of reasonable classifications of service or requires unreasonable investment in facilities. (§ 6 ch 113 SLA 1970)

Collateral references. — Discrimination in provision of municipal services or facilities as civil rights violation, 51 ALR3d 950.

Civil rights: racial or religious discrim-

ination in furnishing of public utilities, services or facilities, 53 ALR3d 1027.

Use priorities: validity of imposition, by state regulation, of natural gas use priorities, 84 ALR3d 541.

Sec. 42.05.310. [Repealed, § 5 ch 113 SLA 1970.]

Sec. 42.05.311. Joint use and interconnection of facilities. (a) A public utility having sewers, conduits, utilidors, poles, pole lines, pipes, pipelines, mains or other distribution or transmission facilities shall, for a reasonable compensation, permit another public utility to use them when the public convenience and necessity require this use and the use will not result in substantial injury to the owner, or in substantial detriment to the service to the customers of the owners. The cost of modifications or additions necessary to a joint use shall be at the expense of the public utility requesting the use of the facilities.

(b) A telecommunications utility shall permit connection to be made and service to be furnished between a system operated by it and the system or toll facilities operated by another public utility or with the communications facility or system of a nonutility, or between its toll facilities and the toll facilities of another public utility, when public convenience and necessity require the connection and the connection will not result in substantial injury to the owner or other users of the facilities of either public utility or in substantial detriment to the service of either public utility.

(c) The tariff of a public utility shall include rules setting out the terms and conditions under which it will construct, or permit its customers or subscribers to construct, and install lines, cables, radio

links, or pipes from its existing facilities to the premises of applicants for service. (§ 6 ch 113 SLA 1970)

Cross references. — For applicability of this section to otherwise exempt utilities, see AS 42.05.321(b).

Sec. 42.05.320. [Repealed, § 5 ch 113 SLA 1970.]

Sec. 42.05.321. Failure to agree upon joint use or interconnection. (a) In case of failure to agree upon the joint use or interconnection of facilities or the conditions or compensation for joint use or interconnections, the public utility, including any municipality, or an interested person may apply to the commission for an order requiring the interconnection. If, after investigation and opportunity for hearing, the commission finds that public convenience and necessity require the joint use or connection, and that the use or connection will not result in substantial injury to the owner utility or its customers, or in substantial detriment to the services furnished by the owner utility, or in the creation of safety hazards, it shall

- (1) order that the use be permitted;
- (2) prescribe reasonable conditions and compensation for the joint use;
- (3) order the interconnection to be made;
- (4) determine the time and manner of the interconnection;
- (5) determine the apportionment of costs and responsibility for operation and maintenance of the interconnection.

(b) This section and AS 42.05.311 apply to all utilities whether or not they are exempt from other regulation under AS 42.05.711. (§ 6 ch 113 SLA 1970; am § 4 ch 136 SLA 1980)

Effect of amendments. — The 1980 amendment added subsection (b).

Sec. 42.05.330. [Repealed, § 5 ch 113 SLA 1970.]

Sec. 42.05.331. Standards for measurement. The commission shall establish by regulation adequate, fair and realistic standards for the measurement of quality, pressure, voltage or other conditions of utility services and shall prescribe reasonable regulations for examination and testing of the service and the accuracy of the devices used to measure it. (§ 6 ch 113 SLA 1970)

Sec. 42.05.340. [Repealed, § 5 ch 113 SLA 1970.]

Sec. 42.05.341. Testing of meter standards. The commission shall provide by regulation for the periodic testing and certification of meter standards by laboratories acceptable to the commission. The commission shall also provide by regulation for the taking of appeals to the commission from the findings of a utility which tests its own meters or appliances for measurement. (§ 6 ch 113 SLA 1970)

Sec. 42.05.350. [Repealed, § 5 ch 113 SLA 1970.]

Sec. 42.05.351. Testing of appliances. The commission shall provide for the examination and testing of appliances used for the measuring of a service of a public utility and may purchase equipment, apparatus, and standards required for this purpose. The commissioner of commerce and economic development may assign the examination and testing function to the section of weights and measures. Upon the payment of a reasonable fee established by the commission, a consumer may have the appliance, which is used by the consumer, tested. The commission shall establish by regulation allowable tolerances with respect to the functioning or operation of the appliance. If the measuring appliance does not perform within these tolerances, the utility concerned shall pay the costs of the test by reimbursing the person requesting the test for the fee paid by that person. This reimbursement shall be made no later than at the time of the next regular billing following the test. (§ 6 ch 113 SLA 1970; am § 43 ch 127 SLA 1974; am § 84 ch 218 SLA 1976)

Sec. 42.05.360. [Repealed, § 5 ch 113 SLA 1970.]

Article 5. Rates and Rate Schedules.

Section	Section
361. Tariffs, contracts, filing and public inspection	411. New or revised tariffs
371. Adherence to tariffs	421. Suspension of tariff filing
381. Rates to be just and reasonable	431. Power of commission to fix rates
391. Discrimination in rates	441. Valuation of property of a public utility
401. Apportionment of joint rates	

Collateral references. — 64 Am. Jur. 2d, Public Utilities, §§ 240 — 245. 73 C.J.S., Public Utilities, §§ 13 — 30, 41.

Sec. 42.05.361. Tariffs, contracts, filing and public inspection.
(a) Under regulations the commission shall adopt, every public utility

shall file with the commission, within the time and in the form the commission designates, its complete tariff showing all rates, including joint rates, tolls, rentals, and charges collected and all classifications, rules, regulations, and terms and conditions under which it furnishes its services and facilities to the general public, or to a regulated or municipally owned utility for resale to the public, together with a copy of every special contract with customers which in any way affects or relates to the serving utility's rates, tolls, charges, rentals, classifications, services or facilities. The public utility shall clearly print, or type, its complete tariff and keep an up-to-date copy of it on file at its principal business office and at a designated place in each community served. The tariffs shall be made available to, and subject to inspection by, the general public on demand.

(b) The tariffs of a public utility which are also subject to the jurisdiction of a federal regulatory body shall correspond, so far as practicable, to the form of those prescribed by the federal regulatory body.

(c) The commission may reject the filing of all or part of a tariff which does not comply with the form or filing regulations of the commission or which is not consistent with this chapter or the regulations of the commission. A tariff or provision so rejected is void. (§ 6 ch 113 SLA 1970)

Opinions of attorney general. — Where public utility company entered into contract to sell natural gas to federal military installations pursuant to federal statute governing such contract negotiations, Alaska Public Utility Commission was precluded by supremacy clause of U.S. Constitution (Art. VI, cl. 2) from asserting

its jurisdiction over the sale. August 4, 1976, Op. Att'y Gen.

The Alaska Public Utility Commission can require that a public utility file copies of its military supply contracts with the Commission pursuant to subsection (a) of this section. August 4, 1976, Op. Att'y Gen.

NOTES TO DECISIONS

Stated in United States v. RCA Alaska Communications, Inc., Sup. Ct. Op. No. 1647 (File No. 3772), 597 P.2d 489 (1979).

Collateral references. — Excessiveness of rates filed and published by carrier

pursuant to law, right to maintain action against carrier on ground of, 97 ALR 420.

Variation of utility rates based on flat and meter rates, 40 ALR2d 1331.

Sec. 42.05.370. [Repealed, § 5 ch 113 SLA 1970.]

Sec. 42.05.371. Adherence to tariffs. The terms and conditions under which a public utility offers its services and facilities to the public shall be governed strictly by the provisions of its currently effective tariffs. A legally filed and effective tariff rate, charge, toll, rental, rule, regulation or condition of service may not be changed except in the manner provided in this chapter. If more than one tariff rate or charge can reasonably be applied for billing purposes the one most advantageous to the customer shall be used. (§ 6 ch 113 SLA 1970)

§ 42.05.380

PUBLIC UTILITIES AND CARRIERS

§ 42.05.381

NOTES TO DECISIONS

Applied in United States v. RCA No. 1647 (File No. 3772), 597 P.2d 489
Alaska Communications, Inc., Sup. Ct. Op. (1979).

Collateral references. — Necessity of bound to render as common carrier, 19
filing rates for services which carrier is not ALR 982.

Sec. 42.05.380. [Repealed, § 5 ch 113 SLA 1970.]

Sec. 42.05.381. Rates to be just and reasonable. (a) All rates demanded or received by a public utility, or by any two or more public utilities jointly, for a service furnished or to be furnished shall be just and reasonable; however, a rate may not include an allowance for costs of political contributions, or public relations except for reasonable amounts spent for

- (1) energy conservation efforts;
 - (2) public information designed to promote more efficient use of the utility's facilities or services or to protect the physical plant of the utility;
 - (3) informing shareholders and members of a cooperative of meetings of the utility and encouraging attendance; or
 - (4) emergency situations to the extent and under the circumstances authorized by the commission for good cause shown.
- (b) In establishing the revenue requirements of a municipally owned and operated utility the municipality is entitled to include a reasonable rate of return.
- (c) A utility, whether subject to regulation by the commission or exempt from regulation, may not charge a fee for connection to, disconnection from, or transfer of services in an amount in excess of the actual cost to the utility of performing the service plus a profit at a reasonable percentage of that cost not to exceed the percentage established by the commission by regulation.
- (d) A utility shall provide for a reduced fee or surcharge for standby water for fire protection systems approved under AS 18.70.081 which use hydraulic sprinklers. (§ 6 ch 113 SLA 1970; am § 1 ch 86 SLA 1976; am § 5 ch 106 SLA 1977; am § 4 ch 45 SLA 1980)

Effect of amendments. — The 1980 amendment added subsection (d).

NOTES TO DECISIONS

Separation of intrastate and interstate properties, expenses and revenues is required for properly determining the adequacy of a utility's

intrastate rates. *United States v. RCA Alaska Communications, Inc.*, Sup. Ct. Op. No. 1647 (File No. 3772), 597 P.2d 489 (1979).

Collateral references. — Charitable contributions by public utility as part of operating expense, 59 ALR3d 941.

Fuel adjustment clauses: validity of "fuel adjustment" or similar clauses authorizing electric utility to pass on increased costs of fuel to its customers, 83 ALR3d 933.

Advertising or promotional expenditures of public utility as part of operating expenses for ratemaking purposes, 83 ALR3d 963.

Affiliates: amount paid by public utility to affiliate for goods or services as

includible in utility's rate base and operating expenses in rate proceeding, 16 ALR4th 454.

Injunctions — rates: validity, construction, and application of Johnson Act (29 USCS § 1342), prohibiting interference by Federal District Courts with state orders affecting rates chargeable by public utilities, 28 ALR Fed 422.

Applied in *Alaska Pub. Util. Comm'n v. Greater Anchorage Area Borough*, Sup. Ct. Op. No. 1139 (File No. 2314), 534 P.2d 549 (1975).

Sec. 42.05.390. [Repealed, § 5 ch 113 SLA 1970.]

Sec. 42.05.391. Discrimination in rates. (a) A public utility may not, as to rates, grant an unreasonable preference or advantage to any of its customers or subject a customer to an unreasonable prejudice or disadvantage. A public utility may not establish or maintain an unreasonable difference as to rates, either as between localities or between classes of service. A municipally owned utility may offer uniform or identical rates for a public utility service to customers located in different areas within its certificated service area who receive the same class of service. Any uniform or identical rate shall, upon complaint, be subject to review by the commission and may be set aside if shown to be unreasonable.

(b) A rate charged by a municipality for a public utility service furnished beyond its corporate limits is not considered unjustly discriminatory solely because a different rate is charged for a similar service within its corporate limits.

(c) A public utility may not directly or indirectly refund, rebate or remit in any manner, or by any device, any portion of the rates and charges or charge, demand or receive a greater or lesser compensation for its services than is specified in its effective tariff. A public utility may not extend to any customer any form of contract, agreement, inducement, privilege or facility, or apply any rule, regulation or condition of service except such as are extended or applied to all customers under like circumstances. A public utility may not offer or pay any compensation or consideration or furnish any equipment to secure the installation or adoption of the use of utility service unless it conforms

to a tariff approved by the commission, and the compensation, consideration or equipment is offered to all persons in the same classification using or applying for the public utility service; in determining the reasonableness of such a tariff filed by a public utility the commission shall consider, among other things, evidence of consideration or compensation paid by a competitor, regulated or nonregulated, of the public utility to secure the installation or adoption of the use of the competitor's service.

(d) Nothing in this section prevents a public utility from charging reduced rates to customers transferred to it from a competing utility provided the reduction is an integral part of a contract, arrangement or plan to eliminate the overlapping of service areas or to minimize duplication of facilities and competition between public utilities. (§ 6 ch 113 SLA 1970; am § 5 ch 136 SLA 1980)

Effect of amendments. — The 1980 amendment substituted "A public utility may not" for "No public utility may" at the beginning of the first and second sentences

in subsection (a), and added the present third and fourth sentences in subsection (a).

NOTES TO DECISIONS

Uniform rates are not required. Jager v. State, Sup. Ct. Op. No. 1161 (File No. 2057), 537 P.2d 1100 (1975).

Only unreasonable or undue preferences are forbidden. Jager v. State, Sup. Ct. Op. No. 1161 (File No. 2057), 537 P.2d 1100 (1975).

When the rate structure is such that one class of customers subsidizes another, discrimination may pass beyond its permitted scope and become undue or unreasonable. Jager v. State, Sup. Ct. Op. No. 1161 (File No. 2057), 537 P.2d 1100 (1975).

Use of existing pre-tax profits builds into new rates any existing discrimination in the rate structure. Jager v. State, Sup. Ct. Op. No. 1161 (File No. 2057), 537 P.2d 1100 (1975).

Discrimination based on justified differences is permissible. — Since only that discrimination which is unreasonable is unlawful, discrimination based on justified differences in the cost of service or

which is otherwise within the zone of reasonableness is permissible. Jager v. State, Sup. Ct. Op. No. 1161 (File No. 2057), 537 P.2d 1100 (1975).

Language of section and of former AS 42.05.460 and 42.05.520 compared. — See Oil Heat Inst., Inc. v. Alaska Pub. Serv. Corp., Sup. Ct. Op. No. 960 (File No. 1850), 515 P.2d 1229 (1973).

Whether subsection (c) violated is question for initial consideration by commission. — Whether as a matter of law a gas company's plan to increase its sales of natural gas violates the provisions of subsection (c) is a question particularly suited for initial consideration by the Public Utilities Commission. Oil Heat Inst., Inc. v. Alaska Pub. Serv. Corp., Sup. Ct. Op. No. 960 (File No. 1850), 515 P.2d 1229 (1973).

Applied in United States v. RCA Alaska Communications, Inc., Sup. Ct. Op. No. 1647 (File No. 3772), 597 P.2d 489 (1979).

Sec. 42.05.400. [Repealed, § 5 ch 13 SLA 1970.]

Sec. 42.05.401. Apportionment of joint rates. (a) If public utilities share in a joint rate the apportionment of receipts shall be just and reasonable. The method of apportionment shall be approved by the commission and the commission may, if it considers it to be in the public interest, establish the portion to which each public utility shall be entitled.

(b) If the commission does not have professional staff to investigate, evaluate and testify regarding any proceeding under (a) of this section it may employ qualified professional consultants for this purpose at the direct expense of the parties to the dispute and divide the cost among the parties in the proportion of their respective operating revenues before commencement of the proceeding. The cost allocation to each party shall be determined before employment of the consultants and after giving the parties reasonable notice and opportunity to be heard. (§ 6 ch 113 SLA 1970)

NOTES TO DECISIONS

Applied in *United States v. RCA Alaska Communications, Inc.*, Sup. Ct. Op. No. 1647 (File No. 3772), 597 P.2d 489 (1979).

Sec. 42.05.410. [Repealed, § 5 ch 13 SLA 1970.]

Sec. 42.05.411. New or revised tariffs. (a) A public utility may not establish or place in effect any new or revised rates, charges, rules, regulations, conditions of service or practices except after 45 days' notice to the commission and 30 days' notice to the public. Notice shall be given to the commission by filing with the commission and keeping open for public inspection the revised tariff provisions which shall plainly indicate the changes to be made in the schedules then in force and the time when the changes will go into effect. The commission shall prescribe means by regulation whereby notice is given to the public before or no later than 15 days after the filing which shall be reasonably adequate to notify customers affected by the filing. The commission, for good cause shown, may allow changes to take effect on less than 45 days' notice to the commission or 30 days' notice to the public under conditions the commission prescribes.

(b) New and revised tariffs shall be filed in the manner provided in AS 42.05.361(a).

(c) Upon the filing of a new or revised tariff, the commission, upon complaint or upon its own motion, without notice, may initiate an investigation of the reasonableness and lawfulness of the change. (§ 6 ch 113 SLA 1970; am § 1 ch 64 SLA 1975)

NOTES TO DECISIONS

Nature of tariff. — This section provides only that a filing of a new or revised tariff be made; it contains no requirement that the tariff be permanent or interim in nature. *United States v. RCA Alaska Communications, Inc.*, Sup. Ct. Op. No. 1647 (File No. 3772), 597 P.2d 489 (1979).

Stated in *Alaska Pub. Util. Comm'n v. Greater Anchorage Area Borough*, Sup. Ct. Op. No. 1139 (File No. 2314), 534 P.2d 549 (1975).

Cited in *Jager v. State*, Sup. Ct. Op. No. 1161 (File No. 2057), 537 P.2d 1100 (1975).

Sec. 42.05.420. [Repealed, § 5 ch 13 SLA 1970.]

Sec. 42.05.421. Suspension of tariff filing. (a) When a tariff filing is made containing a new or revised rate, classification, rule, regulation, practice, or condition of service the commission may, either upon written complaint or upon its own motion, after reasonable notice, conduct a hearing to determine the reasonableness and propriety of the filing. Pending such a hearing the commission may, by order stating the reasons for its action, suspend the operation of the tariff filing for

(1) an initial period not longer than six months beyond the time when it would otherwise go into effect if the annual gross revenues of the utility making the filing are more than \$3,000,000; and

(2) not longer than 150 days before an interim rate equal to the requested new rate goes into effect and not longer than one year before a permanent rate goes into effect if the annual gross revenues of the utility making the filing are \$3,000,000 or less.

(b) An order suspending a tariff filing may be vacated if, after investigation, the commission finds that it is in all respects proper. Otherwise the commission shall hold a hearing on the suspended filing and issue its order, before the end of the suspension period, granting, denying or modifying the suspended tariff in whole or in part.

(c) In the case of a proposed increased rate, the commission may by order require the interested public utility or utilities to place in escrow in a financial institution approved by the commission and keep accurate account of all amounts received by reason of the increase, specifying by whom and in whose behalf the amounts are paid. Upon completion of the hearing and decision the commission may by order require the public utility to refund to the persons in whose behalf the amounts were paid, that portion of the increased rates which was found to be unreasonable or unlawful. Funds may not be released from escrow without the commission's prior written consent and the escrow agent shall be so instructed by the utility, in writing, with a copy to the commission. The utility may, at its expense, substitute a bond in lieu of the escrow requirement.

(d) One who initiates a change in existing tariffs shall bear the burden to prove the reasonableness of the change. (§ 6 ch 113 SLA 1970; am § 6 ch 136 SLA 1980)

Effect of amendments. -- The 1980 amendment restructured subsection (a) into the present introductory paragraph and paragraphs (1) and (2) by dividing the former second sentence following the word "for," adding "if the annual gross revenues

of the utility making the filing are more than \$3,000,000; and" following "go into effect" at the end of the former second sentence, and adding the material contained in present paragraph (2).

NOTES TO DECISIONS

It was error for the superior court to dispense with the commission's order that a utility place funds received pursuant to an interim increase in an escrow account pending the final rate determination since subsection (c) of this section specifically authorizes the commission to take such action. *Alaska Pub. Utils. Comm'n v. Municipality of Anchorage*, Sup. Ct. Op. No. 1645 (File No. 2934), 579 P.2d 1071 (1978).

For discussion of imperfections in the escrow procedure. — See *Alaska Pub. Util. Comm'n v. Greater Anchorage Area Borough*, Sup. Ct. Op. No. 1139 (File No. 2314), 534 P.2d 549 (1975).

Denial of interim rate increase held arbitrary. — Where the superior court found that the existing rate was confiscatory, where the borough was clearly operating the sewer utility at a great loss, where the period prior to a final hearing could be construed to be unreasonable and where the commission failed to provide any further justification for its decision, the denial of the interim rate increase was arbitrary, and the supe-

rior court's injunction voiding the commission's order did not constitute an abuse of its discretion. *Alaska Pub. Util. Comm'n v. Greater Anchorage Area Borough*, Sup. Ct. Op. No. 1139 (File No. 2314), 534 P.2d 549 (1975).

Commission determination that proposed rates were reasonable was not supported by substantial evidence on the record as a whole. *Jager v. State*, Sup. Ct. Op. No. 1161 (File No. 2057), 537 P.2d 1100 (1975).

Procedure consistent with statutory allocation of burden of proof. — Where the commission had first been satisfied by a public utility's evidence that the rates were reasonable and thereafter turned to complainant to show otherwise, this procedure, consistent with the statutory allocation of the burden of proof, is clearly reasonable. *Jager v. State*, Sup. Ct. Op. No. 1161 (File No. 2057), 537 P.2d 1100 (1975).

Refund methods. — See *United States v. RCA Alaska Communications, Inc.*, Sup. Ct. Op. No. 1647 (File No. 3772), 597 P.2d 489 (1979).

Sec. 42.05.430. [Repealed, § 5 ch 113 SLA 1970.]

Sec. 42.05.431. Power of commission to fix rates. When the commission, after an investigation and hearing, finds that a rate demanded, observed, charged or collected by a public utility for a service, subject to the jurisdiction of the commission, or that a classification, rule, regulation, practice, or contract affecting the rate, is unjust, unreasonable, unduly discriminatory or preferential, the commission shall determine a just and reasonable rate, classification, rule, regulation, practice, or contract to be observed or allowed and shall establish it by order. A municipality may covenant with bond purchasers regarding rates of a municipally owned utility, and the covenant is valid and enforceable and is considered to be a contract with the holders from time to time of the bonds. (§ 6 ch 113 SLA 1970)

NOTES TO DECISIONS

History of section. — See *Alaska Pub. Utils. Comm'n v. Municipality of Anchorage*, Sup. Ct. Op. No. 1326 (File No. 2940), 555 P.2d 262 (1976).

Separation of intrastate and interstate properties, expenses and revenues is required for properly determining the adequacy of a utility's

intrastate rates. *United States v. RCA Alaska Communications, Inc.*, Sup. Ct. Op. No. 1647 (File No. 3772), 597 P.2d 489 (1979).

Confiscation. — A court may evaluate the showing of confiscation. That is, although the process of determining whether a rate is confiscatory involves

fact/law determinations which require the special competence of the commission, the ultimate issue in confiscation questions is whether due process will be violated by the continued operation of the rate. *United States v. RCA Alaska Communications, Inc.*, Sup. Ct. Op. No. 1647 (File No. 3772), 597 P.2d 489 (1979).

This section requires the commission to set rates so as to assure that existing bond covenants are met. *Alaska Pub. Utils. Comm'n v. Municipality of Anchorage*, Sup. Ct. Op. No. 1326 (File No. 2940), 555 P.2d 262 (1976).

As to existing bonds, i.e., those bonds which have actually been marketed and for which there are present purchasers or holders, this section requires that the commission set rates so as to assure that bond covenants will not be breached. *Alaska Pub. Utils. Comm'n v. Municipality of Anchorage*, Sup. Ct. Op. No. 1326 (File No. 2940), 555 P.2d 262 (1976).

And not so as to allow municipality to market proposed bonds. — This section does not require the commission to set rates so as to allow the municipality to market proposed bonds, i.e., bonds which have not yet been sold. *Alaska Pub. Utils. Comm'n v. Municipality of Anchorage*, Sup. Ct. Op. No. 1326 (File No. 2940), 555 P.2d 262 (1976).

Prior to the issuance of bonds, the commission is not required by this section to set a rate which would meet the revenue requirements which would be necessary under the covenants if the bonds were sold. *Alaska Pub. Utils. Comm'n v. Municipality of Anchorage*, Sup. Ct. Op. No. 1326 (File No. 2940), 555 P.2d 262 (1976).

This section specifically provides that bond covenants are "valid and enforceable." *Alaska Pub. Utils. Comm'n v. Municipality of Anchorage*, Sup. Ct. Op. No. 1326 (File No. 2940), 555 P.2d 262 (1976).

Covenants must be honored by commission. — Since the commission's approval of a certain rate is necessary, the covenants must be honored by the commission; otherwise there would be no enforceability of the covenants. *Alaska Pub. Utils. Comm'n v. Municipality of Anchorage*, Sup. Ct. Op. No. 1326 (File No. 2940), 555 P.2d 262 (1976).

The plain meaning of this section requires that once the bonds are actually purchased, and actual bond purchasers and holders exist, the covenants are valid and enforceable. The validity of the bond covenants thus requires the commission to respect the provisions of the covenants,

and insure that they will not be breached. *Alaska Pub. Utils. Comm'n v. Municipality of Anchorage*, Sup. Ct. Op. No. 1326 (File No. 2940), 555 P.2d 262 (1976).

No covenant exists where no purchasers or holders. — An existing covenant requires two parties, and until the municipality's bonds have actual purchasers or holders, no covenant is in existence. *Alaska Pub. Utils. Comm'n v. Municipality of Anchorage*, Sup. Ct. Op. No. 1326 (File No. 2940), 555 P.2d 262 (1976).

And commission's rate-setting authority not interfered with. — Until there is an existing covenant with bond purchasers, there is nothing which is valid and enforceable, and therefore nothing to interfere with the commission's general rate-setting authority. *Alaska Pub. Utils. Comm'n v. Municipality of Anchorage*, Sup. Ct. Op. No. 1326 (File No. 2940), 555 P.2d 262 (1976).

Municipally owned utilities in competition with other utilities subjected to full gamut of regulation pertaining to other utilities, with exception relating to bond covenants. — See *Alaska Pub. Utils. Comm'n v. Municipality of Anchorage*, Sup. Ct. Op. No. 1326 (File No. 2940), 555 P.2d 262 (1976).

Standard of review. — Since generally rate-making decisions relate to complex subject matter which requires the particularized knowledge and experience of the rate-making body, the appropriate standard of review is normally whether the administrative body had a reasonable basis for its decision. *United States v. RCA Alaska Communications, Inc.*, Sup. Ct. Op. No. 1647 (File No. 3772), 597 P.2d 489 (1979).

The following requirements must be met before the superior court can intervene and overrule or modify an order of the Public Utilities Commission affecting utility rates. First, the utility must make a serious and substantial showing that the existing rates are so low as to be confiscatory. Second, the utility is obligated to show that no date has been set by the commission for a prompt final hearing, and that the existing confiscatory rates are likely to remain in force for an unreasonable period of time before the Public Utilities Commission makes its permanent rate determination. Third, the utility must convince the court that without the benefit of being permitted to operate under an interim rate increase, it will face irreparable harm. Fourth, the utility is required to demonstrate that if

the interim rate relief is granted, the public can be adequately protected. Fifth, the utility must show that "serious" and "substantial" questions are involved in the rate

case it has presented. *United States v. RCA Alaska Communications, Inc.*, Sup. Ct. Op. No. 1647 (File No. 3772), 597 P.2d 489 (1979).

Collateral references. — State regulation of rates to consumers of gas or electricity transported across state lines for light or power purposes, 7 ALR 1094.

Power of state to fix a minimum public utility rate, 68 ALR 1002.

Municipally owned or operated public utility, power of state or public service commission to regulate rates of, 76 ALR 851, 127 ALR 94.

Sec. 42.05.440. [Repealed, § 5 ch 113 SLA 1970.]

Sec. 42.05.441. Valuation of property of a public utility. (a) The commission may, after providing reasonable notice and opportunity to be heard, ascertain and set the fair value of the whole or any part of the property of a public utility, insofar as it is material to the exercise of the jurisdiction of the commission. The commission may make revaluations from time to time and ascertain the fair value of all new construction, extensions, and additions to the property of a public utility. If a public utility furnishes more than one classification of utility service the utility shall allocate the investment and expenses associated with the property used and useful in furnishing service among the utility services and it may not solely consider the utility's total investment and expenses in fixing rates for a particular service.

(b) In determining the value for rate-making purposes of public utility property used and useful in rendering service to the public, the commission shall be guided by acquisition cost or, if lower, the original cost of the property to the person first devoting it to public service, less accrued depreciation, plus materials and supplies and a reasonable allowance for cash working capital when required.

(c) For rate-making purposes, indebtedness, debt service and payments by a regulated public utility to a person having an ownership interest of more than 70 per cent in the utility shall be considered to be ownership equity, profits or dividends except to the extent that there is a clear and convincing showing that

(1) the indebtedness was incurred, or the payments made, for goods or services which were reasonably necessary for the operation of the utility; and

(2) the goods or services were provided at a cost which was competitive with the price at which they could have been obtained from a person having no ownership interest. (§ 6 ch 113 SLA 1970; am § 1 ch 228 SLA 1976)

§ 42.05.450

PUBLIC UTILITIES AND CARRIERS

§ 42.05.461

NOTES TO DECISIONS

Separation of intrastate and interstate properties, expenses and revenues is required for properly determining the adequacy of a utility's

intrastate rates. *United States v. RCA Alaska Communications, Inc.*, Sup. Ct. Op. No. 1647 (File No. 3772), 597 P.2d 489 (1979).

Sec. 42.05.450. [Repealed, § 5 ch 113 SLA 1970.]

Article 6. Accounts, Records and Reports.

Section

451. System of accounts and reports

461. Continuing property records

471. Depreciation rates, initial losses and accounts

481. Subsidiary business accounts

Section

491. Records and accounts to be kept in state

501. Inspection of books and records by commission

Collateral references. — 64 Am. Jur. 2d, Public Utilities, § 235.

Sec. 42.05.451. System of accounts and reports. (a) The commission may classify the public utilities under its jurisdiction and prescribe a uniform system of accounts for each class and the manner in which the accounts and supporting records shall be kept.

(b) Each public utility shall maintain its accounts on a calendar year basis unless specifically authorized by the commission to maintain its accounts on a fiscal year basis. Within 90 days after the close of its authorized annual accounting period, or additional time granted upon a showing of good cause, each public utility shall file with the commission a verified annual report of its operations during the period reported, on forms prescribed by the commission. (§ 6 ch 113 SLA 1970)

Sec. 42.05.460. [Repealed, § 5 ch 113 SLA 1970.]

Sec. 42.05.461. Continuing property records. The commission may require a public utility to establish, provide, and maintain as a part of its system of accounts, continuing property records segregated by the year of placement in service, including a list or inventory of all the units of tangible property used or useful in the public service, showing the current location of the property units by definite reference to the specific land parcels upon which the units are located or stored. The commission may require a public utility to keep accounts and records in such a manner as to show, currently, the original cost of the property when first devoted to the public service, and the related reserve for depreciation. Each public utility with annual revenues

exceeding \$100,000 shall keep continuing property records. (§ 6 ch 113 SLA 1970)

Sec. 42.05.470. [Repealed, § 5 ch 113 SLA 1970.]

Sec. 42.05.471. Depreciation rates, initial losses and accounts.

(a) To provide for the loss in service value of its property, not restored by current maintenance, every utility shall charge adequate, but not excessive, depreciation expense for each major class of utility property used and useful in serving the public. From time to time the commission shall determine the proper and adequate rates of depreciation for each major class of property of a public utility. The commission shall accept rates of depreciation and depreciation accounts prescribed and maintained under regulations of a federal agency or the terms of a bond ordinance. The commission shall determine and allow depreciation expense in fixing the rates, tolls and charges to be paid for the services of a public utility.

(b) The commission is not bound in rate proceedings to accept, as just and reasonable for rate-making purposes, estimates of annual or accrued depreciation established under the provisions of this section, or to allow annual or accrued depreciation on utility property directly or indirectly contributed by customers or others. (§ 6 ch 113 SLA 1970)

Sec. 42.05.480. [Repealed, § 5 ch 113 SLA 1970.]

Sec. 42.05.481. Subsidiary business accounts. A public utility engaged, directly or indirectly, in another business, including another utility business or a subsidiary business, shall keep separate accounts relating to that business. Except as the commission provides, property, expense or revenue used in or derived from that business may not be considered in establishing the rates and charges of the utility for its public services. (§ 6 ch 113 SLA 1970)

Sec. 42.05.490. [Repealed, § 5 ch 113 SLA 1970.]

Sec. 42.05.491. Records and accounts to be kept in state. A public utility shall keep the books, accounts, papers and records required by the commission, in an office within this state, and may not remove them from the state, except upon the terms and conditions that may be prescribed by the commission. The provisions of this section do not apply to a public utility whose accounts are kept at its principal place of business outside the state, in the manner prescribed by a federal regulatory body; however, such a public utility shall at its option, either furnish to the commission, within a reasonable time fixed by the commission, certified copies of its books, accounts, papers and records relating to the business done by the public utility within this state, or agree to pay the actual expenses incurred by the commission in sending personnel to examine the utility's books and records at the place where they are kept. (§ 6 ch 113 SLA 1970)

Sec. 42.05.500. [Repealed, § 5 ch 113 SLA 1970.]

Sec. 42.05.501. Inspection of books and records by commission. The commission shall at all reasonable times have access to, and may designate any of its employees, agents or consultants to inspect and examine, the accounts, records, books, maps, inventories, appraisals, valuations, or other reports and documents, kept by public utilities or their affiliated interests, or prepared or kept for them by others, which relate to any contract or transaction between them. The commission may require a public utility or its affiliated interest to file with the commission, copies of any or all of these accounts, records, books, maps, inventories, appraisals, valuations, or other reports and documents. (§ 6 ch 113 SLA 1970)

Collateral references. — 73 C.J.S.,
Public Utilities, § 54.

Sec. 42.05.510. [Repealed, § 5 ch 113 SLA 1970.]

Article 7. Financial and Management Regulation.

Section

511. Unreasonable management practices

521. Impaired capital

531. Distribution of surplus and profits

Sec. 42.05.511. Unreasonable management practices. (a) The commission may investigate the management of a public utility, including but not limited to staffing patterns, wage and salary scales and agreements, investment policies and practices, purchasing and payment arrangements with affiliated interests, for the purpose of determining inefficient or unreasonable practices which adversely affect the cost or quality of service of the public utility.

(b) Where unreasonable practices are found to exist, the commission may, after providing reasonable notice and opportunity for hearing, take appropriate action to protect the public from the inefficient or unreasonable practices and may order the public utility to take the corrective action the commission may require to achieve effective development and regulation of public utility services.

(c) In a rate proceeding the utility involved has the burden of proving that any written or unwritten contract or arrangement it may have with any of its affiliated interests for the furnishing of any services or for the purchase, sale, lease or exchange of any property is necessary and consistent with the public interest and that the payment made therefor, or consideration given, is reasonably based, in part, upon the submission of satisfactory proof as to the cost to the affiliated interest of furnishing the service or property and, in part, upon the estimated cost the utility would have incurred if it furnished the ser-

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vice or property with its own personnel and capital. (§ 6 ch 113 SLA 1970)

NOTES TO DECISIONS

Quoted in Alaska Pub. Utils. Comm'n No. 1645 (File No. 2934), 579 P.2d 1071
v. Municipality of Anchorage. Sup. Ct. Op. (1978).

Collateral references. — 73 C.J.S.,
Public Utilities, § 46 et seq.

Sec. 42.05.520. [Repealed, § 5 ch 113 SLA 1970.]

Sec. 42.05.521. Impaired capital. When the commission finds that the capital of a public utility corporation is impaired, or might become impaired, it may, after investigation and hearing, issue an order directing the public utility to cease paying dividends on its common stock until the impairment has been removed. (§ 6 ch 113 SLA 1970)

Sec. 42.05.530. [Repealed, § 5 ch 113 SLA 1970.]

Sec. 42.05.531. Distribution of surplus and profits. The surplus and profits of public utilities shall be distributed in accordance with the bylaws or ordinances controlling the utility. (§ 6 ch 113 SLA 1970)

Sec. 42.05.540. [Repealed, § 5 ch 113 SLA 1970.]

Article 8. Judicial Review, Penalties and Enforcement.

Section	Section
541. Effect of regulations	601. Actions to recover penalties; disposition
551. Review and enforcement	611. Penalties cumulative
561. Injunctive and monetary sanctions	621. Joinder of actions
571. Civil penalties	
581. Each violation a separate offense	

Collateral references. — 64 Am. Jur. 73 C.J.S., Public Utilities, §§ 64 — 68.
2d, Public Utilities, §§ 276 — 291.

Sec. 42.05.541. Effect of regulations. Regulations adopted and issued by the commission in accordance with this chapter have the effect of law. (§ 6 ch 113 SLA 1970)

NOTES TO DECISIONS

Regulation requiring jurisdictional separations to be based upon Ozark methodology held mandatory. — See

United States v. RCA Alaska Communications, Inc., Sup. Ct. Op. No. 1647 (File No. 3772), 597 P.2d 489 (1979).

Sec. 42.05.550. [Repealed, § 5 ch 113 SLA 1970.]

Sec. 42.05.551. Review and enforcement. (a) All final orders of the commission are subject to judicial review in accordance with AS 44.62.560 — 44.62.570 of the Administrative Procedure Act.

(b) If an appeal is not taken from a final order of the commission, the commission may apply to the superior court for enforcement of this chapter, the regulations adopted under it and the orders of the commission. The court shall enforce the order by injunction or other process. (§ 6 ch 113 SLA 1970)

NOTES TO DECISIONS

Orders of commission expressly made subject to Administrative Procedure Act. — Subsection (a) of this section expressly makes orders of the Public Utilities Commission subject to the provisions of the Alaska Administrative Procedure Act (AS 44.62). Greater Anchorage Area Borough v. City of Anchorage, Sup. Ct. Op. No. 856 (File No. 1569), 504 P.2d 1027 (1972), overruled on other grounds, 595 P.2d 626 (Alaska 1979).

AS 44.62.570 is made applicable to review of final orders of the Public Utilities Commission by this section. Jager v. State, Sup. Ct. Op. No. 1161 (File No. 2057), 537 P.2d 1100 (1975).

Applied in Jeffries v. Glacier State Tel. Co., Sup. Ct. Op. No. 1985 (File No. 4298), 604 P.2d 4 (1979).

Sec. 42.05.560. [Repealed, § 5 ch 113 SLA 1970.]

Sec. 42.05.561. Injunctive and monetary sanctions. (a) A person who violates a provision of AS 42.05.291 insofar as it governs the safety of pipeline facilities and the transportation of gas or of any regulation issued under AS 42.05.291 is subject to a civil penalty of not more than \$1,000 for each violation for each day that the violation persists. However, the maximum civil penalty shall not exceed \$200,000 for any related series of violations.

(b) A civil penalty may be compromised by the commission. In determining the amount of the penalty, or the amount agreed upon in compromise, the appropriateness of the penalty to the size of the business of the person charged, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance, after notification of a violation, shall be considered. The amount of the penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the state to the person charged or may be recovered in a civil action in the state courts.

(c) A person may be enjoined by the superior court from committing any violation mentioned in this section. (§ 6 ch 113 SLA 1970)

Sec. 42.05.570. [Repealed, § 5 ch 113 SLA 1970.]

Sec. 42.05.571. Civil penalties. (a) In addition to all other penalties and remedies provided by law, a public utility and every person, and their lessees or receivers appointed by a court in any way subject to the provisions of this chapter, together with their officers, managers, agents or employees that either violate or procure, aid or abet the violation of any provision of this chapter, or of any order, regulation or written requirement of the commission are subject to a maximum penalty of \$100 for each violation. Each act of omission as well as each act of commission shall be considered a violation subject to the penalty.

(b) A penalty may not be assessed unless the commission first issues an order to show cause why the penalty should not be levied. The order shall describe each violation with reasonable particularity and designate the maximum penalty which may be assessed for each violation. The order shall be served on the alleged violator named in the order. The order shall state a time and place for the hearing.

(c) After a hearing the commission shall enter its findings of fact and final order which shall state when the penalties, if any, are payable. (§ 6 ch 113 SLA 1970)

Sec. 42.05.580. [Repealed, § 5 ch 113 SLA 1970.]

Sec. 42.05.581. Each violation a separate offense. Each violation of a provision of this chapter or of an order, decision, regulation or written requirement of the commission is a separate and distinct offense, and in case of a continuing violation each day's continuance is a separate and distinct offense. (§ 6 ch 113 SLA 1970)

Secs. 42.05.590 — 42.05.600. [Repealed, § 5 ch 113 SLA 1970.]

Sec. 42.05.601. Actions to recover penalties; disposition. (a) Actions to recover penalties under this chapter shall be brought by the attorney general in a court of competent jurisdiction.

(b) All penalties recovered under the provisions of this chapter shall be paid to the commission and deposited by it in the general fund of the state. (§ 6 ch 113 SLA 1970)

Sec. 42.05.610. [Repealed, § 5 ch 113 SLA 1970.]

Sec. 42.05.611. Penalties cumulative. (a) All penalties imposed under this chapter are cumulative and an action for the recovery of a civil penalty is not a bar to any criminal prosecution; a criminal prosecution is not a bar to an action for the recovery of a civil penalty.

(b) Neither a criminal prosecution nor an action to recover a civil penalty is a bar to an enforcement proceeding to require compliance, or to any other remedy provided by this chapter. (§ 6 ch 113 SLA 1970)

Sec. 42.05.620. [Repealed, § 5 ch 113 SLA 1970.]

Sec. 42.05.621. Joinder of actions. Under the applicable court rules, appeals from orders of the commission, applications for enforcement of commission orders and actions for recovery of a penalty may be joined. The court may in the interests of justice separate the action. (§ 6 ch 113 SLA 1970)

Sec. 42.05.630. [Repealed, § 5 ch 113 SLA 1970.]

Article 9. Miscellaneous Provisions.

Section	Section
631. Eminent domain	671. Public records
641. Regulation by municipality	681. Validity of certain certificates
651. Expenses of investigation or hearing	691. Utility classes
661. Application fees	

Sec. 42.05.631. Eminent domain. A public utility may exercise the power of eminent domain for public utility uses. This section does not authorize the use of a declaration of taking. (§ 6 ch 113 SLA 1970)

Cross references. — For laws on eminent domain, see AS 09.55.240 — 09.55.640.

Collateral references. — Right to enter for preliminary survey or examination, 29 ALR3d 1104.

Power of eminent domain as between state and subdivision or agency thereof, or as between different subdivisions or agencies themselves, 35 ALR3d 1293.

Applicability of zoning regulations to projects of nongovernmental public utilities as affected by utility's power of eminent domain, 87 ALR3d 1265.

Un sightliness of powerline or other wire, or related structure, as element of damages in easement condemnation proceeding, 97 ALR3d 587.

Review of electric power company's location of transmission line for which condemnation is sought, 19 ALR4th 1026.

Negotiations: sufficiency of condemnor's negotiations required as preliminary to taking in eminent domain, 21 ALR4th 765.

Sec. 42.05.640. [Repealed, § 5 ch 113 SLA 1970.]

Sec. 42.05.641. Regulation by municipality. The commission's jurisdiction and authority extend to public utilities operating within a city or borough, whether home rule or otherwise. In the event of a conflict between a certificate, order, decision or regulation of the commission and a charter, permit, franchise, ordinance, rule or regulation of such a local governmental entity, the certificate, order, decision or regulation of the commission shall prevail. (§ 6 ch 113 SLA 1970)

NOTES TO DECISIONS

Municipal franchises granted to a cable television company were not superseded by the Alaska Public Utilities Commission Act. AS 42.05.010 — 42.05.721, since provisions of a municipal franchise not in actual conflict with com-

mission regulatory activity remain in Sup. Ct. Op. No. 2112 (File No. 4587), 613
force. B-C Cable Co. v. City of Juneau, P.2d 616 (1980).

Collateral references. — 64 Am. Jur.
2d, Public Utilities, §§ 101 — 109.

Sec. 42.05.650. [Repealed, § 5 ch 113 SLA 1970.]

Sec. 42.05.651. Expenses of investigation or hearing. After completion of a hearing or investigation held under this chapter, the commission shall allocate the costs of the hearing or investigation among the parties, including the commission, as is just under the circumstances. In allocating costs, the commission may consider the results, ability to pay, evidence of good faith, other relevant factors and mitigating circumstances. The costs allocated may include the costs of any time devoted to the investigation or hearing by hired consultants, whether or not the consultants appear as witnesses or participants. The costs allocated may also include any out-of-pocket expenses incurred by the commission in the particular proceeding. The commission shall provide an opportunity for any person objecting to an allocation to be heard before the allocation becomes final. (§ 6 ch 113 SLA 1970)

Sec. 42.05.661. Application fees. With each application relating to a certificate the applicant shall pay the commission a fee of \$50 which shall be deposited in the general fund of the state. (§ 6 ch 113 SLA 1970)

Sec. 42.05.671. Public records. (a) Except as provided in (b) of this section, records in the possession of the commission are open to public inspection at reasonable times.

(b) The commission may, by regulation, classify the records submitted to it by regulated utilities as privileged records that are not open to the public for inspection. However, if a record involves an application or tariff filing pending before the commission, the commission shall release the record for the purpose of preparing for or making a presentation to the commission in the proceeding if the record or information derived from the record will be used by the commission in the proceeding.

(c) A person may make written objection to the public disclosure of information contained in a record under the provisions of this chapter or of information obtained by the commission under the provisions of this chapter, stating the grounds for the objection. When an objection is made, the commission may not order the information withheld from public disclosure unless the information adversely affects the interest of the person making written objection and disclosure is not required in the interest of the public.

(d) In this section, "record" means a report, file, book, account, paper, or application, and the facts and information contained in it. (§ 6 ch 113 SLA 1970; am § 8 ch 110 SLA 1981)

Effect of amendments. — The 1981 amendment rewrote this section.

NOTES TO DECISIONS

Narrow construction. — The privilege reflected by this section should be construed narrowly so that it does not conflict with the constitutional requirements of due process. *City of Fairbanks v. Alaska Pub. Utils. Comm'n & Wire Communications, Inc.*, Sup. Ct. Op. No. 2079 (File No. 3977), 611 P.2d 493 (1980).

Due process controls over section. — The requirement of this section that infor-

mation not be withheld if "required in the interests of the public" will normally prevent a conflict with due process requirements. If a conflict nevertheless occurs, due process must control. *City of Fairbanks v. Alaska Pub. Utils. Comm'n & Wire Communications, Inc.*, Sup. Ct. Op. No. 2079 (File No. 3977), 611 P.2d 493 (1980).

Sec. 42.05.681. Validity of certain certificates. A certificate issued before July 29, 1968, to a public utility for the generation, transmission, or distribution of electric energy and power, or for the furnishing of telecommunications may not be considered as terminated, or voided, for the sole reason that the utility did not or would not produce an annual gross income in excess of \$25,000. (§ 6 ch 113 SLA 1970)

Sec. 42.05.691. Utility classes. The commission may by regulation provide for the classification of public utilities based upon differences in annual revenue, assets, nature of ownership and other appropriate distinctions and as between these classifications, by regulation, provide for different reporting, accounting and other regulatory requirements. (§ 6 ch 113 SLA 1970)

Article 10. General Provisions.

Section	Section
711. Exemptions	720. Definitions
712. Deregulation ballot	721. Short title

Sec. 42.05.701. [Renumbered as AS 42.05.720.]

Sec. 42.05.711. Exemptions. (a) The provisions of this chapter do not apply to a person who furnishes water, gas or petroleum or petroleum products by tank, wagon, or similar conveyance, unless the person is thereby supplying water, gas, petroleum or petroleum products to a public utility in which the person has an "affiliated interest."